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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 23, 1999

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

V.

CASE NO. PUE990006

WEST ROCKINGHAM WATER COMPANY, INC.

FINAL ORDER

On February 8, 1999, the Staff of the State Corporation Commission ("Staff") filed a Motion Requesting Issuance of a Rule to Show Cause requiring West Rockingham Water Company, Inc. ("West Rockingham" or "the Company"), to show cause why it should not be found in violation of § 56-265.13:4 of the Code of Virginia. The Staff requested that the Commission, pursuant to our authority under §§ 56-35 and -265.6 of the Code of Virginia, revoke, alter, or amend the Company's certificate to provide water service unless the Company agrees: (1) to bring the water system into compliance with state and federal environmental and waterworks regulations; and (2) to study the entire system and, within six months of the date of the Order herein, present a plan to solve the system's source and infrastructure problems.

On March 8, 1999, the Commission issued a Rule to Show Cause against the Company, directing it to appear on May 6, 1999, in the Commission's courtroom to show cause why it should not be found in

violation of § 56-265.13:4 of the Code of Virginia. The Order also established a procedural schedule and appointed a Hearing Examiner to conduct further proceedings.¹

On April 6, 1999, the Company filed its Response to the Rule to Show Cause, admitting and denying various allegations. The Response noted that recent monthly water tests had been satisfactory and that the two wells serving the system were adequate for daily household use. The Response emphasized that leaks in the distribution system could not be located despite numerous attempts. The Response also stated that updating the system's infrastructure, drilling a third well, and installing a filtration system would cost \$270,000 to \$330,000.

Pursuant to the Rule to Show Cause and subsequent Rulings, the hearing was convened on May 6, 1999, before Hearing Examiner Howard P. Anderson, Jr. Twenty-one (21) West Rockingham customers, appearing as public witnesses, testified about problems they have experienced with the water system. They testified that they have experienced difficulties for as long as 20 to 34 years, including low pressure, cloudy or dirty water, constant outages, and frequent breaks in water mains. They described sharing water between houses and complained about trouble in selling their homes once potential

¹ On April 5, 1999, the Hearing Examiner granted a petition signed by 43 of the Company's customers requesting that the hearing be held in Rockingham County, Virginia. The Hearing Examiner ruled that the May 6, 1999, hearing would be held in the Board of Supervisors Meeting Room in the Rockingham County Administration Center in Harrisonburg, Virginia.

buyers learn of the water problems in the Lilly Gardens and Sunset Heights subdivisions. Customers also noted their willingness to pay more money for decent water.

After the public witness testimony, the Commission Staff presented the testimony of Marc A. Tufaro, Assistant Utilities Specialist in the Commission's Division of Energy Regulation, and John J. Aulbach, District Engineer in the Lexington Environmental Engineering Field Office, Virginia Department of Health, Office of Water Programs ("VDH"). The Company presented the testimony of William F. Wise, President and part owner of West Rockingham. R. Creigh Deeds, Esquire, also participated in the hearing, representing West Rockingham's customers.

Mr. Tufaro testified about the Staff's investigation of a September 30, 1998, complaint by numerous customers who alleged that they had access to water for only six hours a day for a ten-day period.² Mr. Tufaro described an October 1998 visit to the Company, at which time three major problems with the water system were discussed: filtration, the distribution system's infrastructure, and the possibility of adding a third well. Mr. Tufaro also discussed complaints Commission Staff had received since December 1998.

Mr. Aulbach testified that VDH has known of the Company's problems since the late 1980s. He stated that the Lilly Gardens subdivision water lines are too small, causing low pressure, that

² The complaint also questioned the financial soundness of West Rockingham.

the galvanized pipe has pinhole leaks from corrosion and age, that the lines were never looped to enhance reliability, and that there are no blow-off valves to flush the lines.

Mr. Aulbach also testified that, though Sunset Heights has modern PVC pipe, it was not properly installed, causing low water pressure and outages. These problems are compounded by leaks, which are hard to detect because of interference with leak detection equipment. He also noted the need for a cross-connection program to ensure service connections do not negatively impact water system quality.

Concerning source problems, Mr. Aulbach stated that in September 1995 the Company's largest well was found to be under the direct influence of surface water, causing bacteriological problems that are being treated by chlorination. Mr. Aulbach also noted that the Company has been cited for violating the National Primary Drinking Water Regulations³ and the Commonwealth's Waterworks Regulations⁴ due to its failure to take repeat samples to confirm whether a single positive coliform water sample presents a water quality problem or is only a laboratory testing error.

Mr. Aulbach also testified about a preliminary engineering report ("Report") for West Rockingham dated May 4, 1999, prepared by Mr. Wise and submitted to VDH. Mr. Aulbach stated that the Report

³ 40 CFR § 141.21(b)(1).

⁴ 12 VAC 5-590-380 D 1.

adequately addressed the Company's problems and that estimates in the Report appeared to be accurate. The Report lists the system priorities and corresponding costs as:

(1) A filtration system, costing approximately \$40,255, which would increase customer bills by about \$8.07 per month;

(2) Replacement of distribution lines, costing \$105,425, which would increase customer bills by \$10.65 per month; and

(3) A third well, costing \$111,000.

Mr. Aulbach agreed with the Company's priorities for installing a filtration system and replacing distribution lines. He noted that VDH had approved the Report.⁵

Mr. Aulbach also spoke about the State Drinking Water Revolving Fund, which provides low-interest improvement loans and grants to water systems. Mr. Aulbach opined that West Rockingham would be a good candidate for a loan based on the system's problems, complaint history, attention generated by this case, and the Company's willingness to proceed immediately with improvements. Mr. Aulbach further emphasized the necessity of a rate structure that could accommodate loan repayment.

Mr. Wise, on behalf of West Rockingham, testified that the Company is not meeting operating costs. He stated that he is

⁵ Mr. Aulbach qualified his approval of the Report by noting, "Debt is outside of the technical engineering aspects that we're looking at. . . . We're focusing in on the technical aspects of the project." Tr. at 168. The Commission's Staff also had not reviewed the dollar figures in the Report at the time of the hearing. Tr. at 114.

willing to make improvements for which customers will pay but that the current financial situation could not continue. He noted that the Company plans to file for a rate increase when a proper amount can be determined. Mr. Wise further indicated that the Company has no employees and hires an independent plumber to make repairs. He explained that Frank Nadeau, a licensed water system operator employed by Wise & Associates, does not have the equipment to repair West Rockingham's system.

On July 8, 1999, the Hearing Examiner filed his report. Based on the evidence, the Examiner found that:

(1) West Rockingham should file for a rate increase sufficient to cover current operating costs and sufficient to recover costs of a filtration system and necessary repairs and replacement of the distribution system;

(2) West Rockingham should be directed, if it has not already done so, to file application for available grants and loans to cover the cost of making the necessary improvements discussed in the Hearing Examiner's Report;

(3) West Rockingham should file with the Commission progress reports indicating its compliance with the directives discussed above; and

(4) Staff should monitor the Company's progress in making the improvements to the water system deemed necessary for adequate service to be provided to the Company's customers.

The Hearing Examiner recommended that the Commission enters an order adopting these findings and continuing the case on the Commission's docket until such time as the Commission determines West Rockingham is providing adequate service to its customers.

The Commission Staff and Mr. Deeds filed comments to the Hearing Examiner's Report. The Staff concurred with the Hearing Examiner's findings and recommendations but requested that the Commission specifically find the Company has failed to furnish reasonably adequate services and facilities as required by § 56-265.13:4 of the Code of Virginia. The Staff also urged the Commission to provide the Company with a deadline to file for one or more rate increases to cover its current operating expenses, the cost of a filtration system, and necessary repairs and replacement of the Company's distribution system. The Staff asked that any rate increase be conditioned upon the actual performance of repair work to the system. The Staff requested that the Company be required to file any necessary applications for available grants and loans to cover improvement costs.

Additionally, the Staff requested that the Commission provide the Company with guidance concerning progress reports and the times at which reports should be filed. Specifically, the Staff asked the Commission to order the Company to include in its progress reports information concerning the Company's applications for grant and loan monies and the progress of work to accomplish system improvements.

Finally, the Staff asked the Commission to specify that failure to comply with its order will cause the Company to be subject to further fines and penalties.

Mr. Deeds, on behalf of the homeowner customers of West Rockingham, also filed comments. He summarized the public witness testimony, highlighting the Company's failure and refusal to communicate adequately with residents of Lilly Gardens and Sunset Heights or to take action on the problems. Mr. Deeds also expressed dismay at Mr. Wise's testimony that the Company is financially bankrupt while not offering real explanations for his failure to request a rate increase in the past or his ability to allow the Company's financial situation to languish for 23 years. Mr. Deeds suggested the record was incomplete as to whether the Hearing Examiner's finding is accurate on the issue of the Company's financial losses since questions regarding the Company's financial workings were deemed by the Hearing Examiner to be better suited for a rate proceeding than the present show cause proceeding. Mr. Deeds requested the Commission to reject the Hearing Examiner's findings and to enter an order finding the Company in violation of the law, revoking the Company's water certificate, and assessing costs of this proceeding against the Company.

On August 5, 1999, West Rockingham filed a document notifying the Commission that on June 15, 1999, the Company filed an application with the Virginia Revolving Loan Program for the lowest

cost money available. The document also indicated that on August 12, 1999, Company officials would attend a meeting with other applicants of the Loan Fund who had passed the first screening. At this meeting, Loan Fund officials would seek additional information about West Rockingham. The document stated that, if the application were approved, funds likely would be available in July 2000. The document also indicated that an application is underway for a rate increase. Finally, the Information stated that the Company agrees with the Hearing Examiner's findings as to the water system's priorities.

NOW THE COMMISSION, having considered the record, the Hearing Examiner's Report, comments to the Hearing Examiner's Report, information from the Company, and the applicable law, is of the opinion and finds that West Rockingham Water Company has failed to meet its obligations under § 56-265.13:4 of the Code of Virginia by failing to furnish reasonably adequate water services and facilities and that these deficiencies must be corrected. We also find that the Company has failed to comply with all the National Primary Drinking Water Regulations and the Commonwealth's Waterworks Regulations. We will not adopt the Hearing Examiner's recommendations as such, but we have taken them into consideration in fashioning our Order. We note that, by requiring the Staff to review the Company's five-year improvement plan detailed below, we do not intend to decide any rate issues or implications. All rate

requests must be handled in separate proceedings. We further emphasize the importance of complying with the requirements listed below and note that failure to do so shall be deemed a failure to comply with a Commission order to provide adequate service, which may subject the Company to fines up to \$1000 per offense, with each day's continuance of such failure to be considered a separate offense. Accordingly,

IT IS THEREFORE ORDERED THAT:

(1) West Rockingham shall provide reasonably adequate water services and facilities to its customers and shall comply with all applicable federal and state waterworks regulations.

(2) Within ninety (90) days from the date of this Order, West Rockingham shall provide to the Staff a detailed plan including a statement of what system improvements the Company plans to accomplish each year for the next five (5) years, the estimated costs for the improvements including the basis for such estimates, and how the improvements will be financed each year. The plan shall clearly state the annual rate impact to customers for the proposed improvements. The plan also shall state when the Company will file for any rate increases. This report shall be prepared especially for the Commission, although the Company may utilize information in the May 4, 1999, preliminary engineering report when developing its plan.

(3) The Commission's Staff shall review the five-year plan and shall advise the Company if it is acceptable. The Company then shall begin implementation of the plan.

(4) The Company shall file progress reports with the Staff every sixty (60) days, beginning with notification of the Staff's approval of the five-year plan. These progress reports shall contain: (1) the status of any funding the Company expects to receive from the Virginia Revolving Loan Fund or other sources; (2) information concerning how this money and money obtained from rate increases is being allocated to pay for improvements specified in the five-year plan; (3) information regarding when the Company expects to receive any approved funding; and (4) whether funding is in the form of grants or loans or both and, if loans, the applicable interest rate(s).

(5) The Company shall respond to reasonable requests for information made by the Commission's Staff.

(6) This matter is continued generally.